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**ABSTRACT OF THE DOCTORAL THESIS**

**CONVENTIONAL REPRESENTATION  
IN PRIVATE LAW**

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*"The law is the set of conditions through which each individual's freedom can be harmonized with the freedom of all others."*

- *Immanuel Kant*

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## **LIST OF ABBREVIATIONS**

alin. – paragraph

apud. – cited from

art. – article

ANAF – National Agency for Fiscal Administration

C. adm. – Administrative Code

C. Ap. – Court of Appeal

CC – Constitutional Court

CECCAR – Body of Expert Accountants and Authorized Accountants of Romania

CEDO – European Court of Human Rights

C. Civ – Civil Code

CNPP – National House of Public Pensions

C. proc. Civ. – Code of Civil Procedure

C. proc. fisc. – Tax Procedure Code

Dec. – Decision

e.g. – for example

H.G. – Government Decision

M. Of. – Official Gazette of Romania

n.n. – our note

Nr. – number

p. – page

p.p. – pages

s.civ. – civil section

s.pen – criminal section

UNBR – National Union of Bar Associations of Romania

urm. – the following





## INTRODUCTION

This scientific endeavor aims to provide an in-depth and original analysis of the topic "*Conventional Representation in Private Law*", combining fundamental theoretical elements with relevant practical aspects. Through this approach, the study seeks to highlight the essential role of representation in shaping and conducting legal relationships, while also arguing for the importance of this institution in the contemporary dynamics of private law.

In the contemporary legal context, the contract of mandate and the institution of conventional representation are often approached in a simplified manner, with emphasis placed on their immediate applicability in legal relationships. However, a correct and comprehensive understanding of these legal mechanisms requires a detailed analysis that considers multiple doctrinal dimensions, jurisprudential interpretations, and practical implications. Given the rapid evolution of society and the need for efficient legal solutions, an extended interpretation adapted to current economic and social realities is necessary.

The primary motivation for this research stems from the observation that, although forms of representation or authorization are widely used in practice, legal literature does not always reflect their complexity in a sufficiently detailed and applied manner. For this reason, the present study aims to conduct an in-depth analysis of essential aspects such as the form and nature of the mandate (power of attorney or authorization), the characteristics of representation in the activity of public notaries, the specificities of the mandate between professionals, the mandate for judicial representation, and the authorization for representation before tax authorities. Addressing these topics will not only provide theoretical clarification but also facilitate the identification of concrete solutions for improving the regulation and application of this fundamental institution of private law.

In this scientific endeavor, particular attention has been given to the analysis of existing case law, despite its relatively limited volume, as well as to a detailed examination of specialized legal literature. This approach aimed to identify interpretative models and relevant directions in the field of law—elements that, in the absence of a rigorous and methodical investigation, might have remained insufficiently explored or unnoticed. The study of case law, even when quantitatively

limited, provides essential insights into how legal norms are applied and interpreted in practice, thereby contributing to a deeper understanding of legal phenomena.

To conduct this analysis, I have adopted a comprehensive methodology, primarily based on the historical and comparative methods, considering both the evolution of the analyzed legal institution and the differences and similarities among various legal systems. In this context, I have examined one of the fundamental institutions of private law—representation—focusing on its defining aspects, the mechanisms through which it operates, and its practical and theoretical implications.

From a methodological perspective, the research was structured around three essential directions: a comparative analysis of national and international regulations, a historical approach to their evolution, and a prospective outlook aimed at anticipating potential legislative developments. The comparative method allowed for the identification of the specific features of each legal system, as well as points of convergence or divergence, thereby facilitating a more nuanced understanding of how the institution of representation is regulated and applied across different jurisdictions. The historical method was essential in outlining an evolutionary framework of regulations, providing an interpretative context that explains not only the origins and development of current legal norms but also the underlying reasons behind their transformations over time.

Regarding the prospective method, it serves as a valuable tool in analyzing the evolution of law, allowing for the identification of future trends and directions based on the current legal, social, and technological context. In the legal field, the application of this method involves not only projecting future regulatory developments but also objectively aligning them with the needs and expectations of society to ensure that legal frameworks are optimally adapted to new realities. In this research, the prospective method was employed to examine the prospects of digitalizing notarial activities, with a particular focus on electronic representation in notarial offices and the process of executing notarial acts in electronic format. This approach was deemed necessary given the accelerated pace of digitalization and the increasing demands of modern society for more efficient and accessible legal services. Consequently, the analysis explored not only the technical feasibility of these transformations but also the legal, ethical, and practical implications of adopting such innovative mechanisms within the notarial field.

The comparative method is an essential tool in the process of legal knowledge, based on the comparative analysis of different national legal systems and subsystems, legal norms and institutions, as well as the mechanisms of lawmaking and law enforcement across various states or historical periods. This method allows for the identification of both common elements, which

reflect the universality of certain legal principles, and divergent aspects specific to each legal system, depending on its historical, social, and cultural context. Through the application of this method, a distinct branch of legal sciences—comparative law—has gradually developed. This field not only facilitates the understanding and correlation of legal norms across different systems but also contributes to the process of legislative harmonization at the international level.

Today, the use of the comparative method in law is increasingly necessary<sup>1</sup>, given the unprecedented intensification of relations between states, the exponential growth of economic and social contracts, and the ever-closer interdependencies in economic, technological, and cultural development at a global level. This complex reality requires an in-depth understanding of various national legal systems, not only to facilitate international cooperation but also to address the legal challenges posed by phenomena such as globalization, digitalization, and regional economic integration. Thus, the comparative method becomes an indispensable tool in the process of modernizing legislation, formulating regulations adapted to new realities, and promoting efficient and innovative legal solutions at both national and international levels.

From a comparative perspective, the research focused on the regulation of the mandate institution in the French Civil Code, a fundamental reference that significantly influenced the drafting of the Romanian Civil Code of 1864. This code served not only as a normative model but also as a benchmark for the structure and principles of Romanian civil law. Additionally, the examination of the provisions of the Italian Civil Code and the Civil Code of Québec provided a broader perspective on how this legal institution has been modernized and adapted within different legal systems. Notably, the Anglo-Saxon influence reflected in Québec's legal system has had a significant impact on contemporary reforms of the mandate in Romanian law, contributing to the evolution of the regulations incorporated into the new Civil Code adopted in 2011. This legislative reform represented a crucial step in aligning Romanian law with international legal trends and the practical needs of modern society.

Regarding the historical method, it has proven essential in explaining the transformations of the institution of representation and the contract of mandate over time. By analyzing successive stages of development, law reveals not only its continuities but also the changes brought about by different social, economic, and cultural contexts. The evolution of legal norms is not static; rather, it is influenced by historical dynamics and the necessity of adapting to the realities of each era.

Within this research, this approach has enabled the identification of the fundamental features of representation, tracing its origins from Antiquity to the present day. Moreover, the use

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<sup>1</sup> N. Popa, *Teoria generală a dreptului*, Ed. Actami, București, 1997, p. 29.

of the historical method has facilitated a detailed analysis of the contract of mandate, highlighting the way it has evolved and consolidated throughout various historical periods, reflecting its capacity to adapt to the continuously changing legal requirements.

Another essential methodological approach was the application of the logical method, which is indispensable for a rigorous interpretation of the legal norms governing the institution of representation, the contract of mandate, and other related contracts. The logical method involves a set of analytical procedures that facilitate the understanding of the structure and functioning of the legal system, highlighting the relationships between its various components. In a legal context, this method contributes to the clarification and systematization of regulations, allowing for a coherent and well-founded approach to applicable norms. Its application in the research has facilitated the interpretation of relevant legal provisions, providing a clear perspective on how the structural elements of law interact and influence each other.

Thus, the combination of comparative, historical, and logical approaches has led to a deeper understanding of the institution of the mandate, highlighting both external influences on Romanian law and its internal transformations driven by social and economic evolution. This endeavor has not only facilitated the identification of relevant normative models but also emphasized future trends in the regulation and application of this legal institution.

The application of the sociological method in the analysis of legal phenomena is inevitable, given that law represents a fundamental social reality. Legal norms do not exist in isolation; rather, they exert a significant influence on both collective and individual life, shaping behaviors and institutions. Therefore, a jurist cannot limit their analysis solely to the technical aspects of law but must place it within a broader context, integrating the social dimension of legal phenomena. A profound understanding of legal institutions requires consideration of their impact on society, the interactions between legal norms and social realities, and the ways in which law responds to societal needs and socio-economic developments.

Since none of the legal research methods can be used in isolation but only in a necessary interdependence, the fundamental institutions analyzed in this scientific endeavor—representation and mandate—have been studied through an integrated methodological approach. The interconnection of comparative, historical, logical, and sociological methods has enabled a comprehensive investigation of these institutions, highlighting both their theoretical foundations and the practical implications of their regulation and application. This methodological combination has facilitated a more nuanced interpretation of legal norms, shedding light on both their elements of continuity and their capacity for change and adaptation to contemporary social and economic demands.

Regarding legislative records, technology plays a crucial role in facilitating modern legal research. Digital platforms and specialized software programs provide quick access to extensive legislative databases, enabling the identification of correlations between various regulations and the analysis of potential normative conflicts. These tools contribute to a more effective systematization and interpretation of legislation, supporting efforts to harmonize legal norms and optimize the decision-making process in the field of law.

Today, legal research cannot be separated from the practical realities of drafting and applying legal norms. The rapid evolution of society necessitates the constant adaptation of legal research methodologies to effectively address legislative challenges and provide viable solutions to contemporary legal issues. Thus, the interconnection of research methods, the use of digital resources, and the continuous consideration of the social dimension of law become essential aspects of any scientific endeavor aimed at contributing to the development and modernization of the legal system.

This study aims to critically and systematically analyze various doctrinal perspectives on the institution of representation authorization (power of attorney), without claiming to exhaust the full complexity of this subject. In this context, the primary objective of the research is to develop an original perspective on conventional representation through a detailed examination of the relevant legal norms and institutions within Romanian law.

To structure the analysis in a clear and logical manner, the study is organized into chapters, each addressing essential aspects of the topic. Thus, Chapter I, titled "General Considerations on the Institution of Representation," presents the defining aspects of representation, including its concept, characteristic features, and the main forms in which it manifests in law: legal representation, conventional representation, and judicial representation. Additionally, the chapter examines the limits and effects of representation, considering its impact on legal relationships.

The institution of representation manifests in a variety of legal situations, playing a fundamental role in advancing the interests of both natural and legal persons. Therefore, I have sought to demonstrate that representation cannot be reduced to a single model and that attempting to construct a general theory of representation solely based on the structure of the contract of mandate is insufficient and unfounded. In this regard, the comparative analysis of different legal theories has highlighted the complexity of this institution and its multiple forms of manifestation.

A significant part of this chapter is dedicated to the contract of mandate, which serves as the foundation of conventional representation. The analysis covers key aspects such as the evolution of concepts related to the contract of mandate, its regulation under the current Civil

Code, its legal characteristics, the conditions for its validity, the effects it produces, and the causes leading to its termination.

Furthermore, to achieve a deeper understanding of the mandate contract in relation to other civil contracts, I conducted a detailed comparison between the contract of mandate and other legal institutions, such as the commission contract, employment contract, contract for works (antrepriza), and trust (fiducia).

A particular emphasis was placed on analyzing the relationship between mandate and management of affairs (gestiunea de afaceri), given the significant similarities between these two institutions. This comparison highlighted that, in certain circumstances, management of affairs can acquire characteristics of a mandate, especially when it is necessary, useful, or subsequently ratified by the principal (gerat). However, management of affairs remains a lawful legal fact (fapt juridic licit) and cannot be assimilated to a contract when it involves material acts performed by the manager (gerant) for the benefit of the principal. This fundamental distinction sets it apart from conventional mandate.

Through this approach, the study aims not only to highlight the characteristics of each legal institution analyzed but also to contribute to the clarification and deepening of the understanding of representation in Romanian law, within the framework of current regulations and doctrinal developments.

The second chapter focuses on the analysis of representation in notarial activities, considering both the necessity and utility of this institution in the functioning of notarial offices and its legal implications for the protection of individuals' rights. The public notary plays a crucial role in ensuring the legal security of authenticated documents, and conventional representation serves as a fundamental mechanism that facilitates the fulfillment of notarial formalities under conditions of legality and efficiency.

In notarial practice, conventional representation allows individuals and legal entities to exercise their rights and obligations through a representative when they are unable to be physically present. This institution becomes essential in numerous situations, such as the authentication of legal documents, the conclusion of sale-purchase agreements, successions, donations, or the establishment of real estate guarantees. In such contexts, representation provides flexibility and continuity to legal relationships, preventing delays and administrative obstacles that may arise due to the unavailability of the parties.

A central aspect of the analysis is the protection of the rights of individuals within the notarial office, given that the notary has the duty to verify the legality of authorizations granted through powers of attorney and to prevent potential abuses or fraud. In this regard, the rules

concerning the identification of parties, verification of legal capacity, and the expression of free and untainted consent are key elements of notarial activity. These safeguards are designed to ensure that representation is not used in a manner contrary to the interests of the represented person.

A distinct topic addressed in this chapter is the process of digitalizing notarial activities, a significant transformation aimed at modernizing and increasing the efficiency of notarial services. Traditionally, notarial procedures are conducted "in person" and "on paper," requiring the physical presence of the parties and the drafting of documents in written form. Digitalization introduces a new paradigm, enabling the execution of certain notarial operations through electronic means, while ensuring compliance with the security and authentication standards mandated by legislation.

An essential aspect of this process is determining which notarial acts can be executed without the physical presence of the parties, using advanced electronic means such as qualified digital signatures and electronic notarial archives. In this regard, the aim is to implement procedures that allow for: Electronic authentication of documents through digital notarial platforms; Registration and validation of notarial acts in secure electronic registries; Verification of the parties' identities using facial recognition technology and advanced electronic signatures; Communication with parties via notarial videoconferences, in cases where legislation permits this method.

The digitalization of notarial activities responds to the demands of an increasingly interconnected and dynamic society, reducing the time required for document processing and enhancing the accessibility of notarial services. However, this transition also presents several challenges, including the need to update legislation, ensure the cybersecurity of documents, and maintain a balance between innovation and the preservation of legal traditions.

Therefore, this chapter examines not only the benefits of digitalization but also the legal and technical implications of this transformation on the notarial profession, balancing the opportunities offered by technology with the need to uphold the legal security standards required by the role of the public notary.

In the third chapter, the focus is on the power of attorney (authorization) for representation, a fundamental legal mechanism that allows individuals to exercise rights and fulfill obligations through a designated representative. The analysis begins with the definition of this concept and an outline of its characteristic features, followed by an examination of the substantive and formal conditions required for the validity of a power of attorney. Additionally, the chapter explores various types of powers of attorney based on their specific practical purposes, including: power of attorney for a child's travel abroad, power of attorney for inheritance representation, power of

attorney for representation in notarial divorce proceedings, power of attorney required for obtaining social security rights related to pensions, power of attorney for obtaining and collecting a minor's passport (under 14 years old), power of attorney for obtaining a criminal record certificate, power of attorney issued in another state for the completion of an authenticated act in Romania.

Regarding powers of attorney used in professional settings and in relations with tax authorities, the analysis includes aspects related to the power of attorney for company management, the notarial power of attorney authorizing an accountant, and the authorization for the Trade Register.

The final chapter is dedicated to a comparative analysis of the institution of representation across different legal systems, highlighting its particularities in Anglo-Saxon, Italian, French, Spanish, and Moldovan law. The study aims to identify similarities and differences between these systems, emphasizing their mutual influences and the specific adaptations characteristic of each legal tradition.

Regarding Anglo-Saxon law, the analysis examines the main forms of representation, including contractual representation (Agency Law), legal representation, ostensible representation (Apparent Authority), and fiduciary representation, each with distinct applicability in the legal relationships specific to this legal system.

The analysis of Italian civil law focuses on the concepts of indirect representation and simulation, the regulation of the mandate in Italian civil law, and the specific characteristics of the power of attorney for representation. This legal system presents particularities regarding the manner in which representation is exercised and its legal effects on third parties.

In French law, the study examines the legal nature of representation, the particularities of conventional representation, the obstacles that may arise in its application, and the sanctions applicable in cases of non-fulfillment of obligations or exceeding the conferred authority. Additionally, the analysis covers the power of attorney for representation, with a focus on the specific regulations governing this legal system.

The study concludes with an analysis of representation in Spanish civil law, where conventional representation is examined through the concepts of direct representation and voluntary representation, emphasizing the relationship between representation and the institution of mandate.

Through this comparative approach, the chapter aims not only to identify the conceptual and legislative differences between these legal systems but also to highlight the influences and trends toward legal harmonization in the field of representation.



The study concludes with a section dedicated to conclusions and lege ferenda proposals, where the main ideas and research findings are synthesized, highlighting the theoretical and practical implications of the institution of representation. This part includes suggestions for improving legal regulations, considering the need to adapt norms to socio-economic realities and international trends in the field. Following this, a selective bibliography is presented, serving as a fundamental reference point for this scientific endeavor. It includes relevant sources from national and European law, specialized doctrinal works, and significant case law, providing a solid foundation for the analysis and interpretation of the examined topic.

The current Civil Code<sup>2</sup> does not provide a general and unified regulation of the institution of representation but rather integrates its principles within specific legal areas, particularly in matters related to the mandate. However, although the mandate and representation are often analyzed together, they are not synonymous concepts and should not be confused. Representation can exist independently of a mandate contract<sup>3</sup>, just as a mandate can be concluded without necessarily involving a representation relationship. The mandate is merely one of the sources of conventional representation, but there are also other forms of representation that do not derive from a direct contractual relationship between the represented party and the representative.

In this regard, a distinction is made between legal representation and judicial representation, two instances in which representation operates as a result of law or a court decision, without requiring the expressed will of the represented party. These forms of representation are fundamental in various branches of law, serving to protect the interests of individuals who, for various reasons, are unable to exercise their rights or fulfill their obligations on their own.

The concept of representation was described by Ernst Rabel as a "legal miracle"<sup>4</sup>, due to its specific mechanism, through which acts performed by the representative produce direct effects on the represented party. This legal fiction, fundamental in private law, facilitates the functioning of legal relationships by delegating the exercise of rights, thus ensuring the continuity and security of civil transactions. Representation stands as a cornerstone of law, with profound implications both in the realm of contractual relations and in the legal protection of individuals.

The theory of representation, traditionally conceived as being based on a legal fiction, has recently undergone a series of refinements, being reassessed through more in-depth arguments. One such perspective revisits a well-established idea that representation implies that the will of the represented person is expressed through the representative, who merely gives the act a legal form.

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<sup>2</sup> Legea nr. 287/2009 privind *Codul Civil* republicată în Monitorul Oficial al României, Partea I, nr. 505 din 15 iulie 2011.

<sup>3</sup> Cristina Popa Nistorescu, *Reprezentarea și mandatul în dreptul, privat*, Editura C.H.Beck, 2004, p. 9

<sup>4</sup> Ionuț Florin Popa, *Limitele reprezentării voluntare și opozabilitatea*, în *Revista română de drept privat* nr.2/2018, p.88

However, this approach oversimplifies the mechanism of representation and overlooks a crucial aspect: the existence of a mutual agreement between the represented party and the representative.

The representation agreement not only involves an expression of will on the part of the representative in accepting their role but also entails the assumption of obligations related to the acts they will perform on behalf of the represented party. Therefore, in the case of conventional representation, the contractual nature of this relationship cannot be ignored.

Even more so, in the case of legal representation, the argument that the will of the represented person is indirectly expressed through the representative becomes even more difficult to sustain<sup>5</sup>. In this situation, representation operates as a legal effect, independent of the consent of the represented person, which contradicts the idea of a will expressed through delegation.

Legal doctrine also argues that representation constitutes a legal fiction, as it appears to contradict the fundamental principle that the effects of a legal act<sup>6</sup> can only bind the person who directly expressed their consent at the time of its conclusion. However, through representation, the effects of the legal act take effect directly in the patrimony of the represented party, even though they did not participate directly in its conclusion. This particularity underscores the exceptional nature of representation within the legal system, thereby justifying the need for a clear and coherent regulation of this institution, both in relation to the general principles of civil law and in the context of contemporary legal realities.

Legal doctrine consistently highlights the economic significance of the institution of representation, emphasizing its essential role in facilitating legal relationships and optimizing civil transactions. This legal technique offers multiple advantages, including the elimination of constraints imposed by distance and time, allowing legal acts to be concluded efficiently even in the physical absence of the parties. Moreover, representation contributes to the professionalization of contractual intermediation, enabling legal relationships to be managed by individuals with expertise, thereby ensuring greater predictability and legal security.

Another significant benefit of representation is the simplification of the contract formation process by relying on representatives who possess the necessary knowledge and expertise to negotiate and conclude legal acts. Additionally, this institution provides protection and assistance to individuals who, due to a lack of legal capacity, cannot act on their own behalf, thereby facilitating the exercise of their rights and their integration into the legal system.

As society has developed and commercial relationships have become increasingly complex, representation has evolved from an optional mechanism to an indispensable one in

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<sup>5</sup> Cristinel Ioan Murzea, Emil Poenaru, *Reprezentarea în dreptul privat*, Editura C.H. Beck, București 2007, p. 5

<sup>6</sup> P. Vasilescu, *Relativitatea actului juridic civil. Repere pentru o nouă teorie asupra actului de drept privat*, Editura Rosetti, București, 2003., p. 203.

certain fields. In the era of industrialization and a globalized economy, the use of representation has become not only a practical solution but also a necessity imposed by the legal nature of certain entities, such as legal persons, which can act exclusively through their representatives<sup>7</sup>. This aspect highlights the structural role of representation in modern law, reinforcing its status as a fundamental instrument in the economic and legal dynamics of contemporary society.

Representation is a fundamental legal mechanism through which one person (the representative) acts on behalf of and in the interest of another person (the represented party), concluding legal acts whose effects directly impact the patrimony of the represented party. The essential characteristic of this process is that the rights and obligations assumed through the legal act do not arise in the patrimony of the representative but are immediately and directly transferred to the represented party, as if they had acted personally.

Doctrinal interest in the legal technique of representation has significantly increased in the context of its regulation in the current Civil Code, which, in addition to the general provisions on representation (Articles 1295 and 1314), also includes specific regulations on the mandate for representation (Articles 2012, 2013, and 2038). However, one of the most important elements of the representation mechanism—the power of representation—has not been thoroughly analyzed from the perspective of the category of legal competences to which it belongs.

A correct understanding of the power of representation requires clarifying its legal nature. It qualifies as a distinct form of special power, which necessitates a clear distinction between the various meanings of the concept of "power" in law. In a constitutional context, "power" is associated with state authority, whereas in private law, "special power" refers to a delegated legal capacity through which a person acquires the competence to act on behalf of another. This distinction is essential for correlating special powers with the obligations they generate, differentiating the misuse of power from abuse of rights, and clarifying the exercise of special powers in relation to potestative rights.

Another important dimension of the analysis concerns atypical legal situations, such as the existence of representation in the absence of a power of representation or, conversely, the existence of a power of representation without an actual representation relationship. These cases raise significant legal issues regarding the validity of legal acts, their effectiveness, and the consequences they produce in relations between the parties and with third parties.

For a coherent understanding of the institution of representation, it is necessary to clarify the legal content of the power of representation as a form of special power, precisely define the

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<sup>7</sup> Ionuț Florin Popa, „O foarte scurtă introducere în tematica reprezentării”, în *Revista Română de Drept Privat*, nr. 2/2019

term "authorized representative," and highlight the effects that this institution generates. Additionally, the analysis should address the issue of exercising the power of representation, as well as the procedure for its retroactive granting, which can have significant implications for the validity and effectiveness of legal acts concluded through representation.

The defining characteristic of the institution of representation lies in the mechanism through which the effects of a legal act concluded by the representative are directly and immediately transmitted to the represented person, without requiring any subsequent intervention from them. The representative, designated to act on behalf of and in the interest of the represented party, exercises their duties within the established limits and ceases their role upon the fulfillment of the mandate granted.

Representation holds a central place in the legal system, being an indispensable institution in numerous areas of law, from civil and commercial law to administrative and international law. It manifests in various forms, adapting to the specifics of each legal relationship, which is why legal doctrine has emphasized its versatility, comparing it to a mechanism that changes its "legal attire" depending on the normative context in which it operates. It has been rightly stated<sup>8</sup> that representation evokes the concept of an "absent person considered present," as it allows an individual to exercise their rights and obligations through another person, without the need for their physical or direct presence in the process of concluding a legal act. This particularity highlights not only the efficiency of the institution but also its essential role in the dynamics of modern legal relationships.

Representation can arise through a variety of contracts, legal mechanisms, or constructs, with the mandate being just one of the forms in which it manifests. Essentially, representation should not be confused with the legal instruments through which it is implemented but should be regarded as an autonomous mechanism, a legal technique designed to facilitate the conclusion and execution of legal acts on behalf of and in the interest of another person. The contracts and legal structures through which representation is realized serve merely as the means by which this mechanism produces its effects.

In the current Civil Code, representation benefits from a distinct general regulation and is integrated into multiple legal institutions. It is implemented through various forms, such as mandate with representation, agency, intermediation, or the exercise of the legal capacity of a legal entity through its governing bodies. Additionally, institutions like trust (*fiducia*) or property management share common features with the mandate, as they involve the delegation of responsibilities and the exercise of patrimonial rights by a third party for the benefit of another

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<sup>8</sup> Cristinel Ioan Murzea, Emil Poenaru, *Reprezentarea în dreptul privat*, op. cit., p. 1

person. This complexity of regulation highlights the importance of representation as a fundamental legal instrument, adaptable to multiple legal fields and situation<sup>9</sup>.

The essence of representation lies in the concept of authorization, a unilateral or statutory legal act through which a person, acting as the principal, expresses their will to be represented by another person. At the same time, the authorization serves as the means by which the representative demonstrates their legitimacy to third parties, thereby ensuring the certainty and security of the legal relationships in which they are involved.

In this research, we did not focus on the strictly technical aspects of notarial activity, as these have already been extensively analyzed and scientifically substantiated by numerous legal theorists and practitioners. Our objective was to highlight the key dimensions of notarial activity in which the issue of representation becomes particularly relevant.

Given that notarial activity is conducted in full compliance with the principle of legality, we have analyzed a key legal act in this field, where representation and its legal foundation are evident: the power of attorney. This document, drafted by a public notary, benefits from the presumption of authenticity and grants validity to the legal operations carried out based on it, facilitating the creation and execution of various legal relationships essential in everyday life.

The research undertaken was not limited to a mere presentation of the information available in specialized literature but involved a critical and analytical approach, accompanied by the formulation of a personal perspective on the subject analyzed. Thus, the scientific endeavor carried out in this doctoral thesis is not merely a synthesis of existing theories but aims to generate new knowledge through the application and development of current scientific methodology.

The elements of originality in this research are reflected in the combination of theoretical and practical dimensions, ensuring a coherent integration of the three key areas of reference: legal, institutional, and procedural. This comprehensive approach aims not only to provide a deeper understanding of the institution of representation but also to support legislative and operational proposals designed to improve existing regulations.

In conclusion, we express the hope that this doctoral research, along with the conclusions and proposals formulated, will attract the interest of decision-makers and those involved in the regulatory process. At the same time, we leave open the possibility for other researchers to further deepen and develop the legal and operational institutions analyzed, thus contributing to the evolution of legal doctrine and practice.

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<sup>9</sup> Gheorghe Piperea, *Drept comercial român. Teoria generală, întreprinderea, contractele comerciale*, Editura C.H. Beck, București, 2022

## **FINAL CONCLUSIONS**

Without claiming to exhaust the full complexity of the institution of representation, the analysis conducted in this study highlights its essential role in the creation, modification, and termination of legal relationships. Representation serves as a fundamental instrument in legal dynamics, facilitating interaction between individuals and legal entities, streamlining decision-making processes, and enabling the execution of legal activities even in the absence of the directly interested party.

The diachronic examination of the institution of representation confirms its continuous evolution, as it has been recognized since Antiquity and has remained an essential element of legal relationships throughout history. Its universality is reflected in the fact that all legal systems regulate it in various forms, adapting it to the socio-economic and legal realities specific to each era.

The economic significance of representation has been consistently emphasized in legal doctrine, as it plays a fundamental role in optimizing and enhancing the efficiency of contractual relationships. Representation enables the overcoming of spatial and temporal constraints,

the professionalization of business intermediation, the simplification of contractual mechanisms through the use of specialized representatives, and the provision of assistance to individuals lacking legal capacity. In the current context, marked by intensified global interconnectivity, representation has become indispensable in numerous fields. In the case of legal entities, its use has acquired a mandatory character to ensure their proper functioning.

The Romanian Civil Code stands out for its role as the common legal framework in matters of representation, applying even to other branches of law that incorporate this institution, whether in corporate law, notarial law, or tax law. Representation should not be viewed solely as a procedural mechanism but as a broadly applicable legal instrument, adaptable to a wide range of legal contexts and needs.

The analysis conducted in this study confirms that the institution of representation has extensive applicability in economic and social life, facilitating numerous legal and economic operations. From the conclusion of commercial contracts and business management to the exercise of succession rights and the fulfillment of notarial formalities, representation serves as an efficient legal solution for overcoming the limitations imposed by the absence of physical presence or the incapacity of the represented person.

The legal mechanism of the power of representation has enjoyed extensive applicability for centuries due to its undeniable utility. Today, it is no longer just a convenience but has become a necessity in most professional and daily activities, ensuring the continuity and security of legal

transactions. However, most specialized studies focus primarily on the mandate as a source of the power of representation, without thoroughly analyzing the legal nature of this prerogative.

From this perspective, our approach emphasizes the need for a more detailed analysis of representation, considering not only its classical forms in civil law but also its specific manifestations in corporate law and notarial practice. Such an approach is essential for fully understanding the implications of representation and for outlining possible directions for the development of legal regulations in this field. Additionally, the comparative analysis of foreign legal systems allows us to identify innovative legislative solutions that could be adopted and adapted into Romanian law, contributing to the modernization and increased efficiency of the regulatory framework governing the institution of representation.

Conventional representation, also known as voluntary representation, holds a central position within the legal framework of representation in private law. It arises from an expression of will by the principal, who, based on a mandate contract or another legal act, grants another person, known as the agent, the authority to act on their behalf and in their interest. The significance of this form of representation stems from the practical necessity of ensuring the continuity and efficiency of legal, economic, and social relationships, even in the physical absence of the represented person.

Most specialized studies analyzing this legal institution predominantly focus on the mandate contract, recognized as the primary source of the power of representation. However, a strictly mandate-centered approach limits the understanding of the complexity of the legal phenomenon of representation, as it is not confined to a traditional contractual relationship but also requires an in-depth analysis of the legal nature of the prerogatives granted to the representative.

The aim of this study is not only to outline the essential characteristics of representation but also to highlight its intrinsic relationship with the broader concept of legal power. In this regard, it is crucial to clarify the distinction between power, right, and obligation, avoiding any terminological or conceptual confusion. Thus, representation is not merely a subjective right but a true legal power, a prerogative that establishes a connection between individuals and, by its nature, also entails certain duties for the representative. These duties, although not equivalent to typical contractual obligations, are inherent to the exercise of the power of representation and must be fulfilled in good faith.

From the perspective of legal theory, power is not transferred in the strict sense of the term but is conferred. This means that the principal does not lose their prerogatives over the legal acts for which they have authorized another person but retains the right to control or revoke the mandate



at any time, within legal limits. In contrast, the person who receives the power of representation, namely the agent, acts in the interest of the principal and bears the responsibility of adhering to the limits of the authorization granted.

This conceptual refinement is essential for understanding the legal mechanisms governing the institution of representation and for emphasizing its impact on legal relationships across various areas of private law, including commercial, corporate, and notarial law. Thus, conventional representation remains an indispensable instrument in the modern legal framework, providing efficient solutions for managing contractual and administrative relationships by delegating essential responsibilities to trusted individuals, without implying a relinquishment of the principal's fundamental prerogatives<sup>10</sup>.

The mandate is only one of the multiple sources of conventional representation, but it is not the only situation in which a person can act on behalf of and in the interest of another. There are legal contexts where representation operates independently of a mandate contract, as in the case of the commission contract. In such situations, the commission agent acts on behalf of the principal but in their own name, which distinguishes this legal mechanism from the classic representation found in the mandate contract.

The mandate contract is recognized as one of the most common and significant representation contracts, serving as a fundamental pillar of legal relationships based on conventional representation. In legal systems influenced by Roman law, the mandate has evolved as a primary source of such relationships, from which numerous similar contracts have emerged over time, adapted to modern economic and legal requirements. These developments reflect the flexibility and broad applicability of conventional representation, highlighting its crucial role in the organization and conduct of commercial and civil activities.

Even in legal systems inspired by Roman law, where formalism and strict contractual requirements are often imposed to protect the parties, the mandate has been accepted and established as a genuine source of representation. Over time, this institution has enabled the development of diverse contractual mechanisms that meet the needs of contemporary society, ensuring the efficient and adaptable delegation of legal responsibilities. In this sense, the mandate has become a fundamental element of private law, used in various legal and economic contexts, further solidifying its importance as a representation instrument.

The mandate, often referred to by legal doctrine as "the contract with a thousand faces,"<sup>11</sup> has established itself in legal systems as a fundamental instrument for legal relationships based on

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<sup>10</sup> Iulia Oprea, *op. cit.*, p. 58

<sup>11</sup> Claudia Roșu, *Contractul de mandat în dreptul privat intern*, editura C.H.Beck, București, 2008

representation. This contract was not only designed to facilitate the conclusion of legal acts between individuals at a distance but also to compensate for existing inequalities between individuals in terms of knowledge, skills, and legal or economic experience. Thus, the mandate allows one person to act on behalf of and in the interest of another, providing efficient solutions in both personal and professional legal relationships.

The importance of the mandate contract stems from its essential role in modern legal mechanisms, serving as a foundation for numerous other agreements. In practice, the mandate is frequently used for concluding contracts such as sale, lease, exchange, or other legal acts that involve representation. Due to its flexibility, this contract has adapted over time to economic and social needs, becoming an indispensable instrument in various fields, from civil and commercial law to banking and administrative law.

In the Romanian legal system, representation is regulated through a set of general provisions on obligations, outlined in Articles 1295-1314 of the Civil Code. The legislator has made a clear distinction between the institution of representation and the mandate contract, granting the latter a distinct legal regime within the category of special contracts, specifically in Articles 2009-2071 of the Civil Code. Although the mandate is one of the primary sources of representation, it does not encompass the entire category of such legal relationships, as there are other mechanisms that allow the exercise of the power of representation.

Through its detailed regulation, Romanian legislation provides a general normative framework applicable to all forms of legal representation, regardless of their source. However, the general rules place particular emphasis on conventional representation, highlighting the importance of mutual consent between the parties in defining the limits and effects of the power of representation. Thus, the mandate remains an essential institution in private law, offering a reliable legal mechanism for managing and delegating legal responsibilities within various social and economic relationships.

In conclusion, our scientific endeavor aimed to gather and systematize essential information on the institution of representation, highlighting both its fundamental elements and the theoretical and practical challenges it raises. Where legal literature did not provide explicit answers, we sought to analyze and interpret the concepts, while our focus on the practical applicability of this institution led us to propose concrete solutions to the identified issues.

Legal representation, described by Ernst Rabel as a “legal miracle” through which the effects of acts performed by the representative are directly transferred to the represented party, remains a fundamental institution of private law. However, its legal nature continues to raise essential questions within the general theory of civil law, particularly regarding the delegation of

the exercise of autonomy of will and the limits within which it can operate. This theoretical uncertainty underscores the importance of an interdisciplinary and comparative approach to the analysis of representation, especially in the context of evolving international legal relationships and the increasing diversity of forms of mandate and authorization.

As a dynamic institution, legal representation continues to be a subject of reflection and research, as its applicability extends across multiple branches of law. Therefore, our study does not aim to exhaust the complexity of this topic but rather to contribute to its in-depth understanding and open new avenues for exploration. In the future, the analysis of legal relationships arising from the power of representation will remain a central focus of our research, seeking to provide further clarifications on its theoretical and practical implications, both in domestic law and in the context of the harmonization of European regulations.

## ***PROPOSALS FOR LAW REFORM***

The *lege ferenda* proposals represent essential instruments in the process of legislative refinement, aiming to identify existing normative dysfunctions and to anticipate the necessary developments of the legal system. These proposals put forward legislative solutions of a prefigurative nature, oriented towards addressing legislative gaps, aligning legal norms with current socio-legal realities, and strengthening the protection of subjective rights. The present research focuses on the contract of mandate and the legal regime of representation—fundamental institutions of contemporary civil law—which currently present a series of conceptual ambiguities and regulatory inconsistencies that call for a critical reassessment. The objective of this undertaking is to formulate coherent and well-reasoned legislative proposals, intended to clarify the applicable legal norms, enhance legal certainty, and ensure the effective protection of the parties involved in legal relationships governed by private law.

The *lege ferenda* proposals formulated within this study are structured according to their systemic importance and their potential impact on the architecture of civil legal relationships. Accordingly, legislative interventions of fundamental value are placed at the forefront—measures aimed at strengthening legal certainty and clarifying key concepts that are either insufficiently defined or inconsistently applied in practice. Among these are: the express recognition of the doctrine of legal appearance, the regulation of the apparent mandate, and the precise delimitation

of the limits of representative authority. These reforms are particularly relevant for the protection of third parties acting in good faith—whose rights may be jeopardized in the absence of clear normative benchmarks—as well as for maintaining a fair and predictable balance between the interests of the parties involved in legal representation.

Following the proposals of fundamental importance, a series of high-priority legislative measures are identified, intended to strengthen the existing contractual framework without directly affecting the safety of the civil circuit. Although they do not pose major systemic risks, these interventions have a significant impact on the dynamics of mandate-based legal relationships, aiming to improve standards of conduct and ensure a fair balance between the rights and obligations of the parties. This category includes: the establishment of an express confidentiality obligation incumbent upon the mandatary; the formal recognition of the principle of mutual loyalty between principal and mandatary; and the clarification of the duty of diligence and the legal regime governing the mandatary's liability. The adoption of these measures would help prevent abusive contractual practices, increase transparency in the execution of mandates, and strengthen trust between the parties involved in legal representation.

A distinct category of normative interventions consists of medium-priority proposals which, although they do not address structural aspects of the mandate regulation, play an essential role in balancing the legal positions of the parties and in ensuring a uniform interpretation and application of legal provisions. These proposals aim to remedy specific gaps or normative ambiguities that may generate legal uncertainty and inconsistent practices. This section includes topics such as: the legal regime applicable to the plurality of mandataries, the need to regulate the tacit revocation of a mandate, the possibility of conditioning the mandatary's remuneration upon the achievement of a specific result, and the elimination of the obligation of the mandatary's heirs to continue performing the mandate. Although each of these proposals has a specific impact, taken together they contribute to the optimization of the mandate institution and to the strengthening of the coherence of the regulatory framework in this area.

The final stage of the analysis presents the low-priority legislative proposals, primarily aimed at modernizing the procedural framework and adapting it to emerging administrative and technological realities. Although these measures do not directly affect the stability of legal relationships between parties, they may significantly enhance the efficiency of the legal system and reduce bureaucracy in targeted areas. Among the key aspects addressed are: the regulation of exclusive representation in real estate transactions, intended to eliminate conflicts of interest in brokerage practices; and the digitalization of notarial activities, aimed at simplifying and expediting authentication procedures and the issuance of powers of attorney. While these

interventions are not urgent from the perspective of legal certainty, they are part of a broader effort toward legislative and administrative optimization, with the potential to align the Romanian legal system with European standards in terms of access to justice and institutional digitalization.

By organizing the proposals in a logical sequence according to their normative impact and urgency, the present approach aims to clearly distinguish between legislative interventions that require immediate regulation—intended to correct significant imbalances in the current legal framework—and those which, while not urgent, may substantially contribute to the modernization and increased efficiency of the legal system in the medium and long term. This gradual approach reflects both a concern for realistically prioritizing legislative amendments and a coherent vision of the direction in which the regulation of the mandate contract and the institution of representation should evolve within contemporary Romanian civil law.

#### 1. The necessity of defining legal appearance in the Civil Code

One of the foremost issues necessitating legislative intervention is the absence, in Romanian positive law, of a statutory definition of appearance in law – a concept of major importance for the protection of third parties acting in good faith and for maintaining the safety of civil transactions. Although this notion is acknowledged and applied in practice, including within the context of representation, it lacks a unified regulatory framework or clearly defined legal contours, leading to normative uncertainty and inconsistent judicial practice.

In particular, in the case of apparent mandate, situations may arise in which a third party acts under a reasonable belief that a certain person holds the status of agent, despite the absence of a valid power of attorney. In the absence of a clear legal provision regarding the legal effects of appearance, the validity of acts concluded under such circumstances depends exclusively on the subjective assessment of the court, thereby undermining legal predictability and exposing parties to the risk of annulment of acts concluded in good faith.

Unlike the Romanian Civil Code, Western legal systems have long acknowledged the role of appearance in balancing the protection of rightful owners with the legal security of third parties. For example, in French law, jurisprudence has established the *théorie de l'apparence*, according to which the third party acting in good faith is protected when the appearance was created or tolerated by the holder of the right. In German law, the doctrine of *Anscheinsvollmacht* (apparent authority) produces binding legal effects against the principal when the appearance of representation was objectively created and the third party relied on it in legitimate trust.

Against this background, it is necessary to introduce into the Romanian Civil Code a legal definition of appearance in law, specifying: the conditions under which a person may invoke legal appearance (such as the existence of a reasonable belief and objective conduct on the part of the

right holder that generated the appearance), the legal effects of the act concluded under such circumstances, and, potentially, exceptions to its applicability (for instance, when the third party was not in good faith).

Such a regulation would ensure interpretative consistency, strengthen the legal protection of third parties, and enhance the legal security of civil transactions, particularly in representation relationships, where the risks of abuse or confusion are significant.

## 2. The necessity of regulating apparent authority in the context of the sale of another's property

Another notable shortcoming in the current Romanian Civil Code is the absence of an explicit regulation regarding the legal effects of apparent authority, particularly in the case of the sale of another's property, as provided under Article 1683 of the Civil Code. While the sale of an asset belonging to another person is permitted by law, in the absence of a clear provision concerning situations where such a sale is carried out by a purported agent, the rights of a third-party buyer acting in good faith are insufficiently protected, and courts tend to apply inconsistent and often contradictory solutions.

In practice, it is not uncommon for an individual to conclude a contract for the sale of movable or immovable property while claiming to act as an agent based on an alleged, verbal, or even non-existent authorization. The buyer, unable to fully verify the authenticity of the mandate under reasonable circumstances, may contract in good faith, only to later discover that the seller lacked the legal capacity to represent the owner. In such situations, the legal act is subject to either relative or absolute nullity, and the third-party buyer risks losing the asset acquired.

Under the current legal framework, the absence of a protective rule for the good-faith buyer in cases involving apparent authority leads to outcomes that depend solely on the discretionary assessment of the court. This undermines the stability of civil transactions and discourages parties from entering into legal agreements with confidence.

By comparison, French law offers a more balanced model of regulation, under which the third party is protected when the appearance of authority was created or tolerated by the principal. Similarly, Article 1398 of the Italian Civil Code stipulates that if a person contracts as an agent without holding that capacity, they are personally bound unless the principal ratifies the act—except when the third party knew of the lack of authority.

Accordingly, it is proposed that the Romanian Civil Code be supplemented with a provision validating legal acts concluded by an apparent agent when: a reasonable appearance of authority existed; the third party acted in good faith; and the apparent principal contributed, directly or indirectly, to the creation of the appearance.

Such a regulation would allow for the validation of the act in favor of the good-faith third party, reinforcing legal predictability and reducing the risk of losing the acquired asset. At the same time, it would align Romanian law with trends in comparative law, where the legitimate reliance of third parties on apparent legal realities is safeguarded through clear and effective provisions.

### 3. Clarifying the legal framework concerning the limits of representative authority

Article 218(2) of the Romanian Civil Code stipulates that a legal person is bound by acts concluded by its governing bodies, even when such acts exceed the internal scope of their authority, unless third parties knew or should have known of those limitations. Although the provision is intended to safeguard the security of civil transactions, its current wording gives rise to ambiguities, particularly regarding the relationship between a legal entity's internal will and the reliance of third parties on the appearance of legality.

In practice, this regulation may lead to situations of abuse or legal inequality. For instance, a director may conclude a contract on behalf of a company, exceeding the authority conferred by the articles of incorporation or a resolution of the general assembly. The contract is, in principle, enforceable against the company if the third party was unaware of the limitation. However, in the absence of clear criteria concerning good faith or the publicity of internal constraints, legal liability is unevenly distributed, and courts are required to decide on a case-by-case basis, often subjectively.

To eliminate this uncertainty, a revision of Article 218(2) is proposed, introducing objective criteria to delineate the scope of third-party protection. A suggested reformulation might read: “The legal entity shall be bound by the acts of its governing bodies, even where such acts exceed the limits of the representative powers established by the articles of incorporation or statute, unless: a) it is proven that the third party knew or, reasonably, should have known of the limitation; b) the relevant limitations were made public by accessible means; or c) the act was concluded in bad faith by the representative.”

Such a reformulation would introduce a clear due diligence standard for assessing the third party's conduct, enhance the accountability of the representative, and more precisely define the conditions under which the legal entity may refuse to be bound.

In comparative law, this issue is addressed, for example, in Article 33 of the Swiss Civil Code, which limits the effects of acts performed without valid authority when the third party was aware of the lack of representation. Similarly, German law imposes on third parties a duty to reasonably verify the existence and extent of authority before relying on a representative's act.

The adoption of a more nuanced regulation in Romanian law would help reduce legal uncertainty in dealings with legal persons and provide a fairer framework for balancing the protection of third parties with the preservation of an entity's internal autonomy.

#### 4. Establishing the duty of mutual loyalty between the principal and the agent

The legal framework governing the contract of mandate, as regulated by the Romanian Civil Code, clearly establishes the agent's duty of loyalty (Articles 2018 and 2025 of the Civil Code). However, it does not expressly impose a corresponding duty of loyalty on the principal, which creates a contractual asymmetry that may disrupt the fair balance between the rights and obligations of the parties.

In the absence of an explicit provision, the principal may act in a manner that, although formally lawful, undermines the proper performance of the mandate—for example, by providing incomplete information, unduly interfering with the agent's duties, or refusing necessary cooperation. In such situations, the agent may become liable for a negative outcome, without having a clear legal remedy to address the principal's disloyal conduct.

Accordingly, it is necessary to introduce a principle of mutual loyalty between the parties to the mandate, as an expression of contractual cooperation and good faith in the performance of obligations. The proposed legislative amendment would consist of supplementing Article 2018 of the Civil Code with a new paragraph, as follows: "The principal and the agent are bound to treat each other with mutual loyalty, to cooperate in good faith, and to pursue the common interest arising from the contractual relationship of mandate."

This amendment would introduce a contractual balance guarantee, consistent with the principle of contractual solidarity and the modern standards of private law. It would also enable the liability of the principal to be engaged in cases where their conduct has impaired the execution of the mandate, without fault being attributable to the agent.

In comparative law, the reformed French Civil Code (Ordonnance No. 2016-131) provides in Article 1104 that all contracts must be negotiated, concluded, and performed in good faith, and contractual loyalty is regarded as a bilateral obligation, particularly in ongoing cooperation agreements such as the mandate. Similarly, in the Swiss legal system, Article 398 of the Code of Obligations imposes a duty of loyal collaboration between parties throughout the execution of the mandate.

Incorporating a similar provision into the Romanian Civil Code would enhance the ethical standard of contractual relationships, offer courts a clear normative reference for resolving disputes, and reduce the risk of abuse by either party.

#### 5. Introducing an express confidentiality obligation for the agent



Although the contract of mandate inherently involves a high degree of trust between the parties, the Romanian Civil Code does not expressly regulate the agent's duty to maintain the confidentiality of information received or generated during the execution of the mandate. This regulatory gap becomes particularly problematic in contexts where mandates—especially those of a professional nature—involve access to sensitive, confidential, or strategic data (e.g., in legal, financial, medical, real estate, or business consultancy domains).

In practice, the duty of confidentiality is sometimes established through explicit contractual clauses. However, in the absence of a uniform legal provision, several issues may arise: inconsistent legal treatment across similar contracts; evidentiary difficulties in determining the scope of the obligation; and a lack of protection for the principal if such a clause has not been expressly stipulated.

Moreover, in a legal and economic context where data protection, privacy rights, and professional ethics are imperative norms, this gap is becoming increasingly significant.

Accordingly, it is proposed to introduce a separate article in the Civil Code that explicitly regulates the agent's confidentiality obligation. The suggested provision could read as follows:

Article 2025<sup>1</sup> – Confidentiality obligation: “The agent is required to maintain the confidentiality of all information of which they become aware in the course of exercising the mandate, regardless of its form, source, or nature. The obligation of confidentiality shall continue even after the termination of the mandate, except where disclosure is required by law, by a competent authority, or by the legitimate interest of the principal.”

Such a regulation would produce multiple effects: it would provide the principal with a clear legal instrument of protection; it would allow for the sanctioning of unauthorized or abusive disclosures; it would establish a uniform professional standard in regulated fields (e.g., law, accounting, brokerage); and it would encourage the conclusion of mandates in conditions of trust and legal certainty.

In comparative law, this obligation is generally regulated, for example: Article 2003 of the French Civil Code provides that the agent must remain silent regarding confidential information; the Swiss Code of Obligations (Article 321a(4)) explicitly imposes confidentiality on professional agents; and EU regulations on data protection (e.g., GDPR) impose high standards for the safeguarding of information in any form of contractual cooperation.

Therefore, introducing such a provision into the Romanian Civil Code would not only align domestic law with international standards but also reaffirm the principles of loyalty and good faith, which are essential to the integrity of legal representation relationships.

#### 6. Establishing a statutory duty to advise for the professional agent

Under the current regulatory framework, the Romanian Civil Code does not differentiate between an ordinary agent and a professional agent in terms of the required standard of diligence and the corresponding responsibilities. However, in practice, the professional agent—such as a lawyer, consultant, estate manager, or financial or real estate intermediary—possesses specialized expertise and carries out their activity in an organized and recurring manner, which justifies a higher standard of conduct and legal responsibility.

One of the standards widely recognized in comparative law is the duty to advise. This duty entails that the agent must not merely carry out the instructions received but must also actively inform the principal regarding the legal implications, risks, and available options. The absence of such a provision in Romanian law is particularly detrimental to principals who lack legal or technical training and who rely on the professional agent's expertise.

It is therefore proposed to introduce a new paragraph to Article 2018 of the Civil Code, applicable exclusively to professional agents, with the following content: “The agent who performs their professional activity in an organized and remunerated manner has the obligation to reasonably inform the principal about the legal, economic, and technical implications of the actions to be carried out under the mandate, to the extent that these clearly exceed the understanding of a person without specialized knowledge in the relevant field.”

This provision would reflect the principle of informational fairness and would mitigate the risk that the principal may make unfavorable or risky decisions due to a lack of adequate advice.

In comparative law: the French Civil Code (Articles 1112-1 and 2004) enshrines the duty of pre-contractual information and advisory obligations in contract performance, particularly where there is an imbalance in knowledge between the parties; the Swiss Code of Obligations (Article 398) requires the agent to act with the diligence required by the nature of the activity, which, in the case of professionals, entails a detailed advisory obligation; and in the case law of the Italian Court of Cassation, professional agents are held liable for failing to warn clients about inherent contractual risks.

Incorporating such a duty into the Romanian Civil Code would elevate the standard of professional quality and contribute to better protection for principals, ensuring a fair balance in contractual relationships where disparities in knowledge and expertise exist.

#### 7. Clarifying the Duty of Diligence and the Liability Regime of the Agent

The current legal framework established by Article 2018(1) of the Romanian Civil Code distinguishes between two levels of diligence, depending on whether the mandate is for consideration or gratuitous: in the case of a remunerated mandate, the agent is required to act with

prudence and diligence, whereas in a gratuitous mandate, liability arises only in cases of gross negligence. Although this distinction is, in principle, justified, the general wording and the absence of precise normative benchmarks give rise to difficulties in practical application and allow for inconsistent judicial interpretation.

This lack of clarity is particularly problematic in the context of professional mandates, where a higher standard of expertise and an implicit obligation of indirect results are presumed. The current legislative formulation may lead either to excessive liability or to unjustified exoneration. Courts are often left to assess "prudence" and "diligence" subjectively, and in the absence of objective criteria, the principal's right to compensation can become uncertain or inequitable.

Accordingly, it is proposed to supplement Article 2018 of the Civil Code with a new paragraph that clearly differentiates the liability regime based on the nature of the mandate, as follows: "The agent acting for consideration shall be liable for damage caused by any form of fault, including negligence, insofar as he or she has not acted with the average diligence required by the nature of the mandate and by his or her professional status. The gratuitous agent shall be liable only for damage resulting from gross or intentional fault, except in cases where acceptance of the mandate implies specialized competence or involvement in a high-risk field."

This formulation would introduce: an objective standard for assessing the agent's conduct, based on the diligence of a prudent person in similar circumstances; enhanced protection for the principal, particularly in dealings with professionals; and a reasonable limitation of liability for gratuitous agents acting out of goodwill or familial duty.

In comparative law, the French Civil Code (Article 1992) draws a similar distinction, while the German doctrine (BGB § 276 et seq.) imposes a graded standard of fault depending on the level of professionalism and the degree of risk assumed. In common law systems, the fiduciary duty principle imposes a high standard of conduct on professional agents, particularly where there is a power or knowledge imbalance between the parties.

This proposed legislative amendment would therefore ensure a more predictable and equitable interpretation of the duty of diligence and create a fair balance between the trust placed in the agent and the risks borne by the principal.

#### 8. Express Stipulation of the Principal's Obligation to Provide Clear Instructions for the Proper Execution of the Mandate

Although Article 2025(1) of the Romanian Civil Code stipulates that the agent must comply with the instructions received from the principal, the current legal framework does not explicitly impose an obligation on the principal to formulate those instructions in a clear, complete,

and intelligible manner. This normative asymmetry may lead to contractual disputes and evidentiary difficulties, particularly in situations where the outcome of the mandate is unsatisfactory or challenged and the agent is accused of failing to act in accordance with expectations.

In practice, the agent may find themselves executing a vaguely or inconsistently formulated mandate, without clear guidelines regarding the limits and concrete objectives of the assigned mission. In such cases, the agent may be unfairly held liable, even when the ambiguity or omission originated from the principal.

To remedy this legislative gap, it is proposed to supplement the Civil Code with a provision that clearly establishes the principal's obligation to provide precise instructions tailored to the nature and complexity of the mandate. The proposed text could read as follows: "The principal is obligated to provide the agent with clear, complete instructions that are compatible with the nature and purpose of the mandate. In the absence of such instructions, the agent shall not be held liable for damages resulting from a reasonable interpretation of the principal's intent, except in cases of gross negligence or abuse."

This amendment would: establish a fair standard in the assessment of contractual liability; ensure that principals are accountable for defining the scope and limits of delegated tasks; and create a clear legal framework for shielding agents from unfounded or abusive claims.

In comparative law: the Italian Civil Code (Article 1710) requires the principal to provide the agent with all necessary information for the execution of the mandate; French jurisprudence consistently holds that unclear instructions may exonerate the agent from liability when acting in good faith; and in common law jurisdictions, the obligation to provide "clear instructions" is a fundamental element of agency contracts, especially when outcomes depend on strategic decision-making.

#### 9. Express Regulation of Multiple Agents and the Rule of Unanimous Consent

A mandate contract may be granted to one or several agents. However, the Romanian Civil Code does not expressly regulate the manner in which the mandate is to be exercised in cases involving multiple agents, which creates uncertainty in practice, particularly when they are designated to act jointly. In the absence of a default legal provision, the unilateral withdrawal of one agent or their inability to act may paralyze the execution of the mandate, thus undermining the interests of the principal and the security of legal transactions.

Moreover, it is unclear whether, in cases of joint mandate, unanimous agreement is required for revocation or amendment of the mandate, or whether the agents may act individually in the absence of explicit contractual provisions. This legislative gap allows for arbitrary interpretation, which compromises the predictability and efficiency of legal relationships.

It is therefore proposed to introduce a default rule in the Civil Code establishing the principle of unanimous consent among agents in cases of joint mandate, while allowing the parties to derogate from it through agreement. The proposed provision may be formulated as follows: “If a mandate is granted to several persons to be executed collectively, the acts of execution shall be carried out with the unanimous consent of all agents, unless the contract expressly allows for individual action. In the absence of a contrary stipulation, the unilateral withdrawal of one agent shall not affect the validity of the mandate conferred upon the others, unless the nature of the mandate requires joint collaboration.”

This amendment would provide greater clarity regarding: the manner of exercising a joint mandate, the individual powers of each agent, and the legal effects of unilateral withdrawal, particularly in complex, administrative, real estate, or commercial contracts.

In comparative law: the French Civil Code (Articles 2003 et seq.) provides that, in the absence of a contrary stipulation, jointly appointed agents must act together; Italian law similarly favors collective decision-making, but allows for contractual derogation (Article 1726 of the Civil Code); and German law distinguishes between joint representation (*Gesamtvertretung*) and separate representation, with clearly defined rules for each scenario.

Therefore, the inclusion of such a provision in the Romanian Civil Code would enhance coherence, functionality, and contractual balance in situations involving multiple agents, while reducing disputes and the risk of decision-making impasses.

Accordingly, the express inclusion of this obligation in the Romanian Civil Code would help balance contractual responsibilities, reinforce transparency in the legal relationship, and reduce disputes arising from ambiguity in the principal’s intent.

#### 10. Tacit Revocation of the Mandate through Direct Exercise of Powers by the Principal

Revocability is a fundamental feature of the mandate contract, as established by Article 2031 of the Romanian Civil Code, which allows the principal to revoke the mandate at any time. However, the Civil Code does not expressly regulate the hypothesis in which revocation occurs tacitly, through concrete actions undertaken by the principal that fall within the scope of the powers previously granted to the agent. This omission creates uncertainty regarding the effective termination of the mandate and the agent’s liability for legal acts performed in parallel.

For example, if the principal intervenes directly and personally performs legal acts for which the mandate had been previously conferred, without expressly communicating the revocation, several issues may arise: overlapping legal authority, whereby the same power is exercised concurrently by two persons; confusion for third parties who cannot clearly identify the authorized representative; and disputes regarding the validity of acts concluded by the agent after the principal's intervention.

To ensure coherence in legal relationships and to protect the legitimate interests of all parties involved, it is proposed to introduce an express provision recognizing the principal's direct action as a form of tacit revocation. The proposed text could read as follows: "The mandate shall be deemed tacitly revoked if the principal personally, knowingly, and deliberately performs legal or material acts that fall within the scope of the mandate, without maintaining or notifying the continued validity of the previous power of attorney. In such cases, the agent shall be exonerated from liability for acts performed prior to the moment at which they became aware, by any means, of the principal's intervention."

This provision would: establish a clear criterion for recognizing implicit revocation; protect the agent from retroactive liability; and clarify the effective moment of termination of the representation, thereby contributing to the legal security of civil transactions.

Comparative law offers relevant examples: the Italian Civil Code, in Article 1724, explicitly regulates revocation of the mandate through the personal performance by the principal of the acts forming the object of the mandate; in the French system, doctrine and case law recognize tacit revocation as a logical consequence of acts incompatible with the prior mandate; in common law jurisdictions, revocation by conduct is accepted when the principal's actions are incompatible with the continuation of the mandate.

Therefore, a legislative intervention in this respect would help clarify a frequent practical situation and significantly reduce the risk of conflicts arising from overlapping powers between the principal and the agent.

#### 11. Possibility of Conditioning the Agent's Remuneration on the Achievement of a Specific Result

Under the current framework of the Romanian Civil Code, the mandate is rightly characterized as an obligation of means, establishing that the agent is not liable for achieving a particular result, but rather for acting with due care and diligence (Article 2018 of the Civil Code). However, in practice, numerous contracts reflect the parties' intention to condition the agent's remuneration upon the attainment of a specific outcome—particularly in sectors such as real estate brokerage, business consultancy, commercial representation, or professional recruitment.

The lack of an explicit legal provision recognizing the validity of such clauses, when contractually agreed upon, creates uncertainty regarding the enforceability of the payment obligation and may lead to contractual disputes and conflicting judicial interpretations. Moreover, case law is inconsistent: some courts treat the agent's remuneration as always due regardless of the outcome, while others accept conditionality under certain circumstances.

To clarify this issue, it is proposed to amend the Civil Code by introducing a provision expressly allowing the conditioning of the agent's remuneration upon the achievement of the intended result, when this has been contractually agreed by the parties. The proposed legal text could read as follows: "By agreement of the parties, the agent's remuneration may be made conditional upon the attainment of a determined result, in compliance with the principles of good faith and proportionality. In the absence of such an express stipulation, the principal's obligation to pay the remuneration shall arise as a result of the agent's performance of the mandate with the required diligence."

Such a provision would: clarify the scope of contractual freedom in negotiating remuneration terms; protect both parties from abuses (e.g., a principal refusing payment by blaming a failure attributable to their own conduct); and allow for a flexible adaptation of the mandate relationship to the economic context of the contract—especially in fields where success is the primary trigger for remuneration.

In comparative law: both Swiss and French civil law systems uphold the freedom of the parties to determine payment conditions, including success-based remuneration (based on the principle of contractual autonomy); in common law jurisdictions, "no win, no fee" or "success fee" arrangements are widely recognized and enforceable, provided that the party understands the terms and the risk-reward balance is reasonable; within Romanian law, certain special regulations already allow for such mechanisms (e.g., in debt recovery proceedings or banking intermediation, where commissions are triggered upon contract completion).

Consequently, this legislative amendment would contribute to the professionalization of the mandate contract, enhance legal certainty, and align the civil law framework with the practical needs of the economic and professional sectors.

## 12. Elimination of the Obligation of the Agent's Heirs to Continue the Execution of the Mandate

According to Article 2034(3) of the Romanian Civil Code, the heirs of the agent are required to continue executing the mandate, except in cases where the mandate was *intuitu personae*—that is, strictly personal. While the legislator's intention was likely to ensure continuity

in the execution of the mandate in the principal's interest, this provision raises serious issues of fairness, functionality, and compatibility with the general principles of civil liability.

In practice, the agent's heirs: did not consent to assume the obligation, may lack the qualifications, time, or necessary resources, and may become liable for damages resulting from improper or omitted execution, despite having no real control over the pre-existing legal relationship.

Such a solution is particularly problematic for mandates of a technical or professional nature or those requiring a high degree of diligence, where mere assumption of responsibility by an unqualified heir may result in prejudice to all parties involved.

In comparative law: the Italian Civil Code (Articles 1722 and 1723) provides that the mandate terminates by operation of law upon the agent's death, without any obligation on the heirs to continue; French law adopts a similar approach, considering that the death of the agent extinguishes the contract unless the mandate was expressly designed to be transferable; German doctrine views the mandate relationship as *intuitu personae* by nature, allowing for continuation by heirs only through an express stipulation.

Against this backdrop, it is proposed to eliminate the current provision of Article 2034(3) of the Civil Code and replace it with an alternative rule that permits the continuation of the mandate only with the express consent of the heirs. The suggested wording is: "Upon the death of the agent, the mandate shall terminate by operation of law. The heirs may continue its execution only if they expressly accept to do so, within the limits of their capacity and qualifications, and provided that the continuation does not conflict with the *intuitu personae* nature of the mandate."

This formulation would: honor the implicit will of the parties regarding the personal nature of the legal relationship, protect the heirs from involuntary obligations, and reduce disputes over liability for the non-performance of a mandate executed by someone else.

The proposed amendment would align Romanian legislation with well-established solutions in continental legal systems and reinforce a principle of contractual coherence and voluntary assumption of responsibility.

### 13. Introduction of Exclusive Representation in Real Estate Transactions

Currently, the Romanian Civil Code does not contain explicit provisions regarding exclusive representation in real estate transactions, thereby leaving this area subject to the discretion of contractual freedom, which often results in imbalanced arrangements. In practice, real estate agents may represent both the seller and the buyer simultaneously, or promote the same property to multiple clients, without adequately informing the parties involved. This situation



generates significant risks of conflicts of interest, contractual uncertainty, and erosion of trust in the profession of intermediary.

In the absence of regulation on exclusive representation, the legal and economic effects of the agent-principal relationship remain ambiguous, especially when there is no clear delineation of duties concerning loyalty, disclosure, and confidentiality. Good-faith third parties may suffer prejudice, and parties may contract under unequal conditions of information and bargaining power.

Therefore, it is proposed to amend the Civil Code by introducing a provision expressly allowing and defining exclusive representation in real estate transactions, following models established in comparative law. The proposed text could read: "By agreement, the principal may grant the agent the exclusive right to represent them in a specific real estate transaction. In such case, the agent shall be prohibited from representing or assisting the opposing party in the same transaction, under penalty of nullity of the contract concluded and forfeiture of the remuneration."

Such a provision would enhance transparency, contractual loyalty, and the protection of the economic interests of the parties in a field characterized by high values and a significant risk of fraud or misrepresentation.

In comparative law: in the United States and Canada, real estate agents operate under well-regulated exclusive representation models ("exclusive buyer/seller agency"), with conflicts of interest strictly prohibited; in France and Belgium, agents may act on behalf of only one party if an express and registered agreement exists; in UK law, professional conduct codes prohibit simultaneous representation without the informed and written consent of both parties.

The proposed regulation would contribute to: the professionalization and standardization of the agency relationship in the real estate sector; the reduction of disputes concerning commissions or the validity of brokerage contracts; and the alignment of Romanian legislation with international principles of integrity, fairness, and transparency in real estate intermediation.

#### 14. Supporting the Digitalization of Notarial Activity – Between Modernization and Legal Accessibility

In the context of the European and global trend toward the transition to digital public services, Romanian notarial activity remains largely embedded in a traditional bureaucratic framework, which requires the physical presence of the parties and the use of printed documents. Although Law No. 455/2001 on electronic signatures and, more recently, Law No. 246/2022 on the use of qualified electronic signatures in the notarial field have paved the way for digitalization, the actual implementation of these provisions has been slow, fragmented, and uneven nationwide.

In this regard, it is proposed to support the expansion of notarial services in digital format, not only through technical regulations but also by enshrining principles of accessibility, efficiency,

and legal equivalence of digital procedures, either through amendments to the Civil Code or by adopting procedural reference norms. This approach does not aim to fully replace the classical format, but rather to institutionalize the option for electronic procedures where the nature of the act and the will of the parties allow it.

The proposed legislative amendment (for example, under the Title on authentic instruments or agency contracts) could be worded as follows:

"Notarial acts may be drawn up, signed, and archived in electronic format, subject to the legal conditions and the use of a qualified electronic signature, equivalent to a handwritten signature. The electronic procedure shall produce the same legal effects as the traditional form, provided that all parties have expressly consented to its use and the act is not subject, by its nature, to specific legal requirements regarding form."

This provision would allow for: the expansion of the use of remote notarial powers of attorney (including in professional, administrative, or judicial representation mandates); a reduction in indirect costs and processing times for citizens and professionals; and enhanced access to justice and notarial services for vulnerable persons, individuals with limited mobility, or those residing abroad.

In comparative law: Estonia and Lithuania have already adopted fully digital notarial authentication systems; Spain and France allow the creation of certain notarial acts via videoconference, with a qualified digital signature; in Germany, a recent reform (*Gesetz zur Umsetzung der Digitalisierungsrichtlinie – DiRUG*, 2021) permits the online drafting of articles of incorporation for limited liability companies and other standardized contracts.

In Romania, the gradual implementation of this reform would contribute to: aligning national legislation with the requirements of digital transformation in justice and public administration; increasing the institutional efficiency of the notarial profession; and strengthening citizens' trust in legal technology as a vector of modernization and equitable access to justice.

The *lege ferenda* proposals formulated in this study aim to strengthen the legal framework governing agency contracts and representation, by addressing current legislative gaps, clarifying the reciprocal obligations of the parties, and ensuring effective legal protection for third parties acting in good faith. The approach adopted has been both gradual and integrative, structuring the proposed normative interventions according to their practical relevance, their impact on the security of civil transactions, and the necessity of aligning with European trends in private law.

Each proposal is grounded in the need for transparency, contractual loyalty, and regulatory efficiency, in a legal context where the evolving dynamics of social and economic relationships demand the continuous adaptation of classical legal institutions to contemporary realities. The

proposed reforms — ranging from the regulation of apparent authority and the introduction of a duty to advise for professional agents, to the digitalization of notarial activity — share the common goal of modernizing and functionalizing contract law in a predictable and equitable manner.

The adoption of these legislative amendments would represent not merely a punctual improvement of isolated norms, but a systemic step towards a more coherent, accessible, and socially responsive civil law. At the same time, they would support the harmonization of national legislation with European models and reinforce confidence in legal instruments as a means of balancing contractual freedom with the protection of legitimate interests.

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